IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.973 OF 2004.

Bhismillah A.H.Khan & Ors. ...Appellants

Versus

Thane Municipal Corporation ...Respondent

Shri A.Y.Sakhare, Sr Counsel i/by Shri R.P.Mudholkar for the Appellants.

Shri R.S.Apte for the Respondent.

CORAM : ABHAY S.OKA, J.
DATED : 17th December, 2007.

P.C.:

1. Heard the learned senior counsel appearing for the appellants and the learned counsel appearing for the respondent. The Second Appeal is preferred by the original plaintiffs. The suit for perpetual injunction was filed by the appellants-plaintiffs against the respondent restraining the respondent-corporation from demolishing the suit chawl consisting of different premises held by the respective appellants located on the plot of land bearing Survey No.13, Hissa No.3 situated near Murphy Radio, Eastern Express Highway, Thane. The suit has been dismissed by the trial Court and the decree of dismissal has been confirmed in the appeal.

2. It appears that the suit was filed by the

appellants as there was a threat given by the respondent-corporation to demolish the suit structure for construction of a service road. During the pendency of the suit, service road has been admittedly constructed and appellants have shifted their structures to land bearing Final Plot No.134.

3. After having heard the submissions of the learned senior counsel appearing for the appellants, I find that no substantial question of law arises in this Second Appeal. After the structures of the appellants were re-located by them on Final Plot No.134, the plaint was amended. The evidence was led by the parties thereafter. In the examination-in-chief of the officer examined by the respondent-corporation he stated that at the time of construction of the service road, the appellants-plaintiffs on their own removed their structures and constructed the structures on Final Plot No.134. He stated that the construction carried out by the appellants was unauthorised. The finding of the courts below and in particular Appellate Court is that there is no cross-examination made of the officer of the respondent-corporation on the said aspect. That is the reason why a finding has been recorded by the Appellate Court that the structures erected by the appellants on Final Plot No.134 are not authorised. There is nothing

on record to show that the structures erected by the appellants were legal and authorised.

4. In view of the findings of fact recorded by the courts below, no case is made out for interference and Second Appeal deserves to be dismissed.

5. At this stage the learned senior counsel appearing for the appellants without prejudice to contentions raised by the appellants in this appeal submits that there is a policy of the said respondent-corporation to grant suitable sites to the persons affected by construction of service road and therefore, the appellants desire to apply for allotment of suitable accommodation. He, therefore, submitted that notwithstanding the dismissal of the Second Appeal, the suit structures may be protected for a reasonable time.

6. Hence, I pass the following order:

(i) The Second Appeal is dismissed with no orders as to costs. If application as aforesaid is made by the appellants to the respondent-corporation within a period of three weeks from today, the concerned authority of the corporation will

decide the said application within a period of six weeks from the date of receipt of the application. The concerned authority of the respondent-corporation will decide the said application on its own merits.

(ii) If application is accordingly made by the appellants within a period of three weeks from today, for a period of 12 weeks from today the suit structures shall not be demolished. During the said period of 12 weeks, the appellants will maintain status-quo as of today in respect of the suit structures.

(iii) If application is not made within the stipulated period of three weeks, it will be open for the respondent-corporation to take action of demolition on completion of the period of three weeks.

(iv) The order passed on the application shall be communicated to the appellants within a week of the date of passing the order.

(v) Parties to act upon an authenticated copy of this order.

JUDGE